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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91197505
Party	Defendant Alpha Phi Omega
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Date	05/09/2016
Attachments	Answer.pdf(169578 bytes ) 181 Registration.pdf(458024 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OMEGA, S.A. (OMEGA AG) (OMEGA LTD),

OPPOSER,

v.

ALPHA PHI OMEGA,

APPLICANT.

Opposition No. 91197505

Serial No. 77905236

**ANSWER TO AMENDED NOTICE OF OPPOSITION**

Comes the Applicant Alpha Phi Omega (“Applicant”), and for its Answer to the Amended Notice of Opposition filed by Opposer Omega, S.A. (Omega AG) (Omega Ltd.) (“Opposer”), Applicant states as follows:

1. Applicant denies the allegations of paragraph 1 of the Amended Notice of Opposition and further specifically denies so much of said paragraph as in effect alleges Opposer’s use of the Opposer’s Marks for clothing commenced prior to Applicant’s first use of the mark sought to be registered for the goods recited in the opposed application, namely, headwear, jackets, shirts, and sweat shirts.
2. Applicant lacks information sufficient to admit or deny the allegations of paragraphs 2 and 3 of the Amended Notice of Opposition, and on that basis denies those allegations.
3. Applicant lacks information sufficient to admit or deny the allegations of paragraph 4 of the Amended Notice of Opposition, and on that basis denies those allegations, and on information and belief affirmatively states that Opposer’s continuous use of the Opposer’s Marks for clothing commenced subsequent to Applicant’s first use of the mark sought

to be registered for the goods recited in the opposed application, namely, headwear, jackets, shirts, and sweat shirts.

4. Applicant admits so much of paragraph 5 of the Amended Notice of Opposition as alleges the listed registrations are incontestable to the extent provided by the Trademark Act. Applicant denies each and every other allegation of said paragraph of the Amended Notice of Opposition.

5. Applicant denies the allegations of paragraph 6 of the Amended Notice of Opposition.

6. Applicant lacks information sufficient to admit or deny the allegations of paragraphs 7 and 8 of the Amended Notice of Opposition, and on that basis denies those allegations.

7. Applicant denies the allegations of paragraphs 9 of the Amended Notice of Opposition and further affirmatively states the opposed application for registration does not relate to use for goods in Class 14.

8. Applicant denies the allegations of paragraphs 10 and 11 of the Amended Notice of Opposition.

9. Applicant denies the allegations of paragraphs 12 of the Amended Notice of Opposition and further specifically denies so much of said paragraph as in effect alleges Opposer's use of the Opposer's Marks for clothing commenced prior to Applicant's first use of the mark sought to be registered for the goods recited in the opposed application, namely, headwear, jackets, shirts, and sweat shirts.

10. Applicant lacks information sufficient to admit or deny the allegation of paragraph 13 of the Amended Notice of Opposition, and on that basis denies that allegation.

11. Applicant denies the allegations of paragraphs 14 and 15 of the Amended Notice of Opposition.

12. Any allegation of the Amended Notice of Opposition not admitted above is expressly denied.

### **Morehouse Defense**

13. Applicant is the owner of a registration with the United States Patent and Trademark Office of the mark ALPHA PHI OMEGA for headwear, jackets, shirts, and sweat shirts, namely Registration No. 3,828,181 (“the ‘181 Registration). A true copy of the ‘181 Registration is attached hereto as EXHIBIT 1.

14. The ‘181 Registration owned by Applicant is incontestable to the extent provided by Section 15 of the Lanham Act, 15 U.S.C § 1065.

15. The ‘181 Registration of the words ALPHA PHI OMEGA owned by Applicant is for the identical goods for which Applicant is here seeking to register the phonetically identical Greek alphabet letters, ΑΦΩ, namely headwear, jackets, shirts, and sweat shirts.

16. The words ALPHA PHI OMEGA which are the subject of the ‘181 Registration owned by Applicant are an exact transliteration of the ΑΦΩ Greek alphabet letters which Applicant is here seeking to register.

17. The ΑΦΩ Greek alphabet letters which Applicant is here seeking to register are legally equivalent to the words ALPHA PHI OMEGA which are the subject of the ‘181 Registration owned by Applicant.

18. As a matter of law, by virtue of Applicant’s ownership of an incontestable registration of the legally equivalent mark, ALPHA PHI OMEGA, for headwear, jackets, shirts, and sweat shirts, Opposer cannot, to the extent requisite to succeeding with this opposition

proceeding, be damaged by registration of the ΑΦΩ mark here sought to be registered for the identical goods, namely, headwear, jackets, shirts, and sweat shirts.

Wherefore, Applicant denies that Opposer will be damaged by registration of the ΑΦΩ mark, and requests that this opposition proceeding be dismissed.

/jackawheat/

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#### **CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION**

I hereby certify that a true copy of this correspondence entitled ANSWER TO AMENDED NOTICE OF OPPOSITION in Opposition No. 91197505, *Omega S.A. v. Alpha Phi Omega*, is being filed electronically with the U.S. Patent and Trademark Office using the ESTTA service, and deposited this 9<sup>th</sup> day of May, 2016, with the United States Postal Service with sufficient postage as first class mail in an envelope addressed as follows:

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/jackawheat/

Jack A. Wheat

# United States of America

United States Patent and Trademark Office

## ALPHA PHI OMEGA

**Reg. No. 3,828,181**

**Registered Aug. 3, 2010**

**Int. Cl.: 25**

**TRADEMARK**

**PRINCIPAL REGISTER**

ALPHA PHI OMEGA (MISSOURI CORPORATION), AKA ALPHA PHI OMEGA NATIONAL  
SERVICE FRATERNITY  
14901 EAST 42ND STREET  
INDEPENDENCE, MO 64055

FOR: HEADWEAR; JACKETS; SHIRTS; SWEAT SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND  
39).

FIRST USE 0-0-1980; IN COMMERCE 0-0-1980.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,315,321 AND 2,320,138.

SEC. 2(F).

SER. NO. 77-905,132, FILED 1-5-2010.

LAURIE MAYES, EXAMINING ATTORNEY



*David J. Kyfos*

Director of the United States Patent and Trademark Office